

REMARKS/ARGUMENTS

Favorable reconsideration of the present application is respectfully requested.

Claim 15 has been cancelled. The claims have been revised for clarity. The scope of the claims, other than Claim 10, is not believed to have been substantially altered thereby. Claim 10 has been further amended to recite that the rotating frame has a width which is substantially the same as that of the lower traveling body. Basis for this is shown in Figure 9A. Claim 10 has been further amended to recite a support member for the working device protruding from the front end of the upper rotating body. Basis for this is found in Figure 1. Claim 10 has been further amended to recite the feature of cancelled Claim 15 that a battery is disposed outward of the fuel tank. Claim 10 has been further amended to recite that the battery is in a concave part of the fuel tank. Basis for this is shown in Figure 9A.

The claims are directed to a small swing type excavator of the type having a small rotating radius. Space on the rotating frame of such an excavator is at a premium, and so difficulties arise in providing an efficient arrangement of the required devices thereon. For example, in the case of an excavator having an air conditioner, the space required for the air conditioner has conventionally limited the size of the fuel tank. According to a feature of the invention set forth in Claims 1-3, on the other hand, the fuel tank comprises an extension portion extending to at least the front surface of the air conditioner, to thereby increase the capacity of the fuel tank.

Claims 1 and 2 had been rejected (paragraph 1 of the Office Action) under 35 U.S.C. §103 as being obvious over Japanese patent publication 11-269923 in view of Japanese patent publication 2001-295319. According to the Office Action, JP '923 lacks the feature of a fuel tank extending to the front surface of an air conditioner, but that this would have been obvious "to make the best use of the limited space" in view of the teaching in JP '319 of an

air conditioner arranged on a lower side floor of the operator cab. However, this rejection is respectfully traversed.

JP '923 discloses an excavator having an operator seat 11 and a canopy 12. It lacks an operator cabin, however, and so does not provide an air conditioner. Moreover, as the Office Action has recognized, since no air conditioner is present, the fuel tank 35 is not restricted in size, and so neither has, nor requires, an extension portion extending to at least the front surface of the non-existent air conditioner.

JP '319 discloses an excavator having an enclosed operator cabin with an air conditioner 9 located beneath the operator's seat 5. The location and configuration of the fuel tank, however, is not described or disclosed in JP '319. Therefore, here again, there is no teaching of a fuel tank comprising an extension portion extending to at least the front surface of an air conditioner.

Nonetheless, the Office Action deemed that it would have been obvious in view of JP '319 for one skilled in the art to have modified JP '923 to have included an air conditioner, and further to have provided an extension of the fuel tank extending to at least the front surface of the air conditioner, "to make best use of the limited space." It is respectfully submitted, however, that the aforementioned rationale is flawed in at least the following respects.

First, the rationale for modifying JP '923 to include the claimed extension portion assumes a need "to make best use of the limited space." However, the available space in JP '923 is not limited by the presence of the air conditioner, and so this reference does not necessarily have a "limited space."

Second, one skilled in the art would not have been motivated to have provided an air conditioner in JP '923 since it lacks an enclosed cab.

Finally, to the extent that space is limited in JP '923, a generalized desire to "make best use of the limited space" may suggest maximizing efficiency in the arrangement of parts, but would provide no indication of how this should be done. In particular, it would not suggest adding an air conditioner to an excavator lacking an enclosed cab, or the far more specific claimed solution of providing an extension portion of the fuel tank extending to at least the front surface of the non-existent air conditioner in JP '923.

It is therefore respectfully submitted that one cannot compensate for the many shortcomings of JP '923 – no operator cab, no air conditioner and no extension portion of the fuel tank – simply based on the general desire to make best use of a limited space, and so Claims 1-3 define over any combination of JP '923 and JP '319.

Claims 4-9 are directed to a further feature of the invention whereby the power source is inclined along its length such that one of its ends is disposed closer to the rear of the rotating frame than is the other end. This is illustrated in Figure 5A. As a result of this inclination, the fuel tank may be separated from the hydraulic pump at the rearmost end side of the power source by a predetermined space, and the hydraulic oil tank disposed in the predetermined space.

The rejection of paragraph 1 in the Office Action does not specifically refer to the limitations of Claim 4. In any case, neither JP '923 nor JP '319 discloses a power source which is inclined from the lateral direction, or a fuel tank disposed in front of a hydraulic pump disposed on a lateral end of the inclined power source which is closer to the rear of the rotating frame. Therefore, the features of Claims 4-9 are also not taught by JP '923 and JP '319.

Claims 10-14 and 16-21 are directed to a further feature of the invention wherein the hydraulic pump, power source and cooling device are disposed laterally in a line as rear row devices, and the control valve, hydraulic oil tank and fuel tank are disposed as front row

devices. Claim 10 now further recites that the fuel tank is disposed between a battery and the swivel joint, and the battery is disposed in a concave part of the fuel tank and outward of the fuel tank. An example of this is shown in Figure 9A.

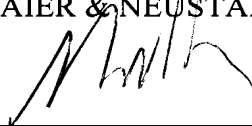
JP '923 discloses a fuel tank at 35 and a battery at 36. However, there is no disclosure of the battery being provided in a concave part of the fuel tank as is now claimed. JP '319 also fails to disclose a battery disposed in a concave part of the fuel tank, and so Claims 10-14 and 16-21 also define over this prior art.

Concerning paragraphs 2-5 of the Office Action, the additional references cited in the further rejections of these paragraphs do not overcome the shortcomings of JP '923 and JP '319, as set forth above, and so the claims are believed to define over any combination of the cited prior art.

Applicants therefore believe that the present application is in a condition for allowance and respectfully solicit an early notice of allowability.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



---

Robert T. Pous  
Attorney of Record  
Registration No. 29,099

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/07)  
RTP/rac

I:\ATTY\RTP\258249US-AM.DOC